American Association of Port Authorities
Serving the Ports of Canada, the Caribbean, Latin America and the United States

TESTIMONY OF JEAN C. GODWIN

Executive Vice President and General Counsel
American Association of Port Authorities

HEARING ON FINANCING PORT INFRASTRUCTURE

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INTRODUCTION

Good morning. My name is Jean Godwin and I am the Executive Vice President and General Counsel of the American Association of Port Authorities. Founded in 1912, AAPA represents virtually every U.S. public seaport agency, as well as the major port agencies in Canada, Latin America and the Caribbean. AAPA members are public entities mandated by law to serve public purposes, primarily the facilitation of waterborne commerce, generation of local and regional economic growth, and environmental stewardship. I am testifying today on behalf of the 82 U.S. public port members of the American Association of Port Authorities.

Mr. Chairman, before I begin my remarks on the topic of this hearing, I would like to thank you and Ranking Member Costello, and all the members of this subcommittee and committee, and your staff, for moving the Water Resources Development Act (WRDA) of 2003 through this committee and on to passage by the full House. As you know, regular enactment of WRDA is extremely important to the public port industry because it authorizes new navigation improvement projects, which are so important to the nation's ability to handle growing trade volumes; and, because WRDA provides timely policy direction to the Corps of Engineers, which allows the agency to respond to economic, environmental, and societal changes. Your efforts should remind all Americans that members of Congress work with the strength of Hercules and the wisdom of Solomon, and we can all be proud of your accomplishments.

As this hearing will demonstrate, and Congressman Rohrabacher highlighted in his floor statements during the House's consideration of WRDA, the issues related to who should pay for port infrastructure and security improvements are extremely important. AAPA commends you, Mr. Chairman, for calling today's hearing to explore these issues.

As this subcommittee is keenly aware, the needs are great, yet the responsibility is dispersed. The Federal government, with state and local governments and the private sector, makes considerable investments in port infrastructure to expedite and secure the movement of people and cargo. This system of port development is as old as the nation itself, and is a complex ecology of competitive and cooperative relationships that builds and supports each American's ability to access global markets.

In my testimony today, I will discuss these two topics:

- The nature and scope of America's Port Financing System; and,
- AAPA's thoughts regarding alternative port financing approaches.

If I could leave just one message with you today, it would be that continued public investment, at both the Federal and state/local levels, is critically important for our transportation system to grow and thrive in the expanding global marketplace. While directly charging users for service is always desirable, there are situations where user fees distort the marketplace and can result in devastating unintended consequences. Decisions to structurally alter the roles and responsibilities of partners in the existing port financing system to address new requirements or shifting fiscal realities must be carefully considered and guided by a common commitment to having a world-class port system. Mr. Chairman, I come here today, representing the U.S. public port industry, committed to working with you, the Committee, and all stakeholders to provide the nation with a system of world-class ports.

THE NATURE AND SCOPE OF AMERICA'S PORT FINANCING SYSTEM

Our nation's port system is a national asset that serves a broad range of economic and strategic interests. The United States has the most extensive, complex and decentralized marine transportation system in the world; it is an appropriate asset for the world's largest trading country and sole superpower. A large measure of this country's unprecedented economic growth is due to the increased productivity of the American economy and foreign trade. To remain competitive in the global marketplace, U.S. businesses must have an efficient and reliable transportation system.

This section of my testimony discusses the many public benefits provided by the nation's port system as well as the sources of funding. A brief discussion of the funding needs for the nation's port system follows.

The Public Interests Served

Economic Benefits: Ports' activities link every community in our nation to the world marketplace, enabling us to create export opportunities and to deliver imported goods more inexpensively to consumers across the nation. Ports help American exporters from every state develop and maintain markets around the world for a variety of commodities, ranging from paper, forest and agricultural products, to plastics, chemicals and pharmaceuticals; from fruits and vegetables to poultry, beef and cotton; and, from machinery and automobile parts to frozen fish. Millions of cruise ship passengers move through the nation's ports annually on their vacations.

The industry also provides American consumers and businesses with inexpensive access to a vast array of goods from around the world, including more than half of the petroleum used, 75% of the apparel, and 95% of the footwear worn in this country, food products, beverages such as coffee and beer from around the world, flowers, kitchenware, household appliances, furniture and bicycles, marble and tile, automobiles, auto parts and tires, machinery and tools, electronic goods, computer equipment and copiers, manufacturing components and supplies, and thousands of other goods.

All ports serve multi-state needs. The foreign trade activities of each state are supported by a variety of ports both within and, more often, outside the state. On average, each state relies on between 13 to 15 ports to handle 95 percent of its imports and exports.[1] The goods from 27 states leave the country through the ports in Louisiana alone. Midwestern grain supplies the Pacific Rim market through ports in the Pacific Northwest. Imported crude oil refined in New Jersey and Pennsylvania reaches consumers on the entire East Coast, from Maine to Florida. Steel that travels to major Midwestern industrial centers is delivered cheaply and efficiently through Great Lakes ports. Ports on the West Coast handle goods such as cars, computers, and clothing, which are destined for consumers throughout the country.

U.S. Gross Domestic Product (GDP) is dramatically more dependent on international trade than at any earlier time; its relative contribution rose from 10.7 percent in 1970 to 26.9 percent in 2002, a 150 percent increase. During that same period the volume of overseas trade, 95 percent of which moves through U.S. ports, also more than doubled, and is expected to double again by 2016. The number of twenty-foot equivalent (TEUs) shipping containers moving through U.S. ports, which were virtually non-existent in 1970, doubled between 1990 and 2000, from 15.2 to 30.4 million TEUs, and is expected to double again over the current decade. [2]

The dependence of our national economy on U.S. ports was brought home to American businesses and consumers last year during the West Coast labor dispute. According to numerous estimates, the closure of West Coast ports for 10 days last fall cost the U.S. economy more than $1 billion <u>every day</u>. Secretary of Agriculture Ann Beneman has been quoted as saying that the effect on agricultural commodities alone was $500 million per week.

National Defense Benefits: We should also not lose sight of the fact that the ports continue to play a very critical role in our nation's defense. The huge buildup of U.S. forces in and around the Persian Gulf during Operation Desert Shield/Desert Storm would have been impossible without the modern facilities and strong support provided by America's ports. According to the U.S. Military Traffic Management Command (MTMC), between August of 1990 and March of 1991, MTMC loaded 312 vessels and more than 4.2 million measurement tons of cargo in 18 U.S. ports for delivery to the Persian Gulf in support of Desert Shield/Desert Storm.

The reliance of the U.S. military on our nation's seaports in the context of Operation Iraqi Freedom has been even greater in light of the closure of many U.S. military bases and the drawdown of U.S. Forces in Europe. Nearly all of the military equipment sent to the Persian Gulf within the last year was loaded in commercial U.S. seaports (rather than coming from Europe or U.S. military ports). More than 50 ports have agreements with the Federal Government to provide ready access for national emergency purposes.

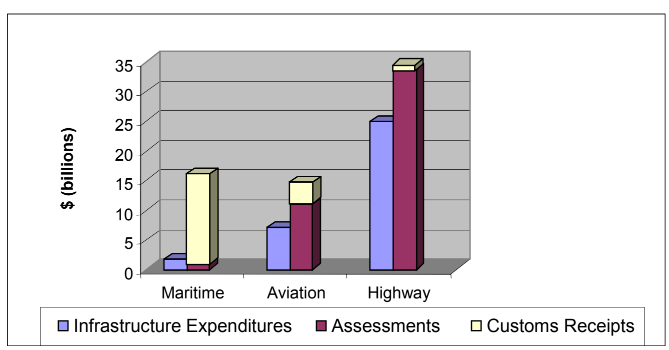
Funding Sources for Public Expenditures

Governments use a variety of funding sources to advance their goals, and the need to review and develop alternative approaches to funding public objectives in the port system is critical. This section discusses the major sources of funds spent by the Federal government and local port authorities.

Port Authority Funding Sources: The U.S. public port industry spends an average of $3 billion annually to operate and develop port facilities--$1.7 billion in operating expenses and nearly $1.4 billion in capital improvements. Users of the port system directly support a substantial portion (84%) of public port expenditures (operating income, retained earnings, and revenue bond proceeds). Public funding supported only 5% of the public port industry's $1.7 billion operating expenses and about 30% of its $1.4 billion annual capital improvement expenditures (e.g., general obligation bonds, grants, taxes, loans, etc.).[3] The port industry expects to invest an average of $1.5 billion per year in capital expenditures over the next five years. (This is likely a conservative estimate because a comparison of past capital spending forecasts conducted by the U.S. Maritime Administration showed that actual expenditures exceeded the forecast by between 4 and 44% for each annual five-year forecast made between 1992 and 1996.)

Federal Funding Sources: According to the U.S. General Accounting Office (GAO), the Federal government spent an average of $1.7 billion annually on infrastructure (construction and maintenance—dredging, constructing or maintaining locks and dams or operating and maintaining aids to navigation) for the commercial maritime transportation system.[4] Revenues into Trust Fund accounts, virtually all of which are dedicated to infrastructure investment, averaged $830 million or 49 percent of that total. Figure 1 illustrates the relationship of Federal expenditures on infrastructure investments and revenue (e.g., assessments plus Customs duties) in the marine transportation system compared to the aviation and highway systems.[5]

Figure 1.
Comparison of Federal Expenditures and Assessments and Customs Receipts from Users for Each Transportation Mode (Average for Fiscal Years 1999-2001)



Future Investment Needs in Landside Access and Security

Ports face the challenge of balancing the facilitation of trade with the need to increase security. The estimated cost of meeting the recently released Federal security requirements is nearly $5.4 billion over the next ten years just for facilities. Ports have already invested millions of their own dollars in port security since September 11, 2001, and they will not be able to continue to fund the extensive new requirements without increased Federal assistance. In many cases funds to pay for security are being diverted from other infrastructure improvements necessary to meet the continuing growth in trade, which is expected to double and even triple in certain ports over the next 10 years.

The new Coast Guard port security regulations will require $1.125 billion on facilities in the first year alone and more than a half billion dollars each year after that. This level of expenditure amounts to more than one-third of total annual public port industry expenditures and more than 80 percent of public port capital expenditures in the first year. Out-year funding requirements will amount to more than 30 percent of ports' total pre-September 11th operating expenditures. AAPA is asking Congress and the Administration to provide $400 million in grant funding for seaport security in the fiscal 2005 budget.

We have also stressed to the Transportation and Infrastructure Committee the need to amend Federal surface transportation programs to increase funding for freight projects in order to facilitate our international trade and meet our national security objectives. Once ships arrive at a port, modern highway and rail systems are essential to moving goods quickly to and from inland regions. Like a pipeline, the nation's intermodal transportation system is only as efficient as its narrowest, most congested point, which is often the landside connection. No matter how much ports invest or how productive ports make their marine terminal facilities, our transportation system cannot operate to maximum efficiency unless cargo can move quickly, and cost effectively, in and out of ports. AAPA has worked diligently with other interest groups, members of the Freight Stakeholders Coalition, to seek provisions in TEA-21 reauthorization to benefit freight projects and to allow them to compete more effectively for surface transportation funding (already collected from port users in the form of the highway gas tax).

The Administration's proposed "Safe and Flexible Transportation Efficiency Act of 2003," or SAFETEA proposal contains a number of freight provisions that are strongly supported by AAPA and the Freight Stakeholders Coalition. One of those provisions provides for a set aside of dedicated funding for intermodal freight and Strategic Highway Network (STRAHNET) connectors from funds apportioned for the National Highway System (NHS). The amount of such funding would be determined by the proportion of freight/STRAHNET connector miles in a State compared to the total NHS mileage in the State, or 2% of funds apportioned for the NHS in a fiscal year, whichever is greater. (A State could be exempted from the required set-aside by showing that connectors in the State are in good condition and providing an adequate level of service.) In addition to the set aside, such connectors would be eligible for a 90 percent Federal cost share.

With $30.1 billion proposed by the Administration for the NHS program over 6 years (a number we hope to see increased by Congress), the 2 percent set aside would result in more than $600 million in funding for highway connections into port, rail, truck, airport and other freight terminals. Using the Administration's proposed numbers, the state of California alone, with more than $2.25 billion in NHS funds over the 6 year bill, would be required to spend more than $45 million on intermodal connectors. Other provisions of SAFETEA would expand eligibility, enhance freight planning and permit freight projects to more effectively compete for funding from other programs as well. AAPA believes that this is an appropriate source of funds for these projects.

ALTERNATIVE FUNDING SOURCES

This section discusses AAPA's thoughts on a number of alternative funding sources.

National User Fees: AAPA does not generally support new national user fees or taxes to cover port system expenditures. Assessing any national user fee on international commerce presents a complex set of legal, commercial and competitive challenges that are difficult to overcome. The port industry's experience with national user fees, particularly the harbor maintenance tax (HMT), has not been an altogether positive one. Since enacted in 1986, the HMT has been subject to legal challenge both under the U.S. Constitution and under international treaties (the tax on exports has already been repealed as unconstitutional), surpluses have built up in the trust fund, and AAPA has had to fight numerous proposals to expand the use of the fund beyond maintenance dredging.

An acrimonious debate surrounded the development of the harbor maintenance tax in the mid-1980s, and ports and shippers were divided. Some preferred a tonnage tax on cargo (particularly expensive for low value, bulk commodities), while others preferred an ad valorem tax (obviously more expensive for high value cargo).

Because shipping contracts can hinge on a few tenths of a cent per bushel of grain or pennies on a ton of coal, transportation costs can be the deciding factor for foreign buyers choosing between American or foreign bulk products. Without access to efficient waterborne transportation, U.S. bulk commodities could not compete in international markets. In addition, fees and taxes imposed only in the U.S. can put U.S. ports at a competitive disadvantage compared to our Canadian and Mexican competitors.

After the tax was tripled in 1991, collections of the HMT far exceeded the expenditures for many years, and as a result there is a surplus in the Harbor Maintenance Trust Fund of approximately $1.7 billion.[6] The surplus would have reached nearly $3 billion by the end of fiscal year 2001 except for the Supreme Court decision. AAPA tried in vain in the early 1990s to have the level of the fee reduced, but ran into the "pay-go" roadblock created by Congressional budget rules.

As the legal challenges to the HMT mounted, AAPA formed a Task Force to try to develop a replacement for the HMT. AAPA identified four criteria that U.S. ports believe have to be addressed in any alternative user fee:

- There should be equity among ports so that each port gets a reasonable return for fees paid on cargo moving through it;

- The fee should not add to the price of the nation's bulk or breakbulk export products (e.g. grain, coal, paper products), making these commodities uncompetitive in international markets;

- The fee should not alter the competitive position among U.S. ports or induce the diversion of cargo from U.S. ports to Canadian or Mexican ports; and,

- The fee should meet the constitutional test set out by the Supreme Court that it should be reasonably related to the service provided.

AAPA has been unable to identify any national user-fee system to replace the HMT that can equitably raise revenues from the users of navigation channels in reasonable relation to the distribution of benefits to the nation.

Unfortunately, these same issues will arise in the context of discussing any national user fee. In the area of security, AAPA did not support the national user fee proposal considered during the House-Senate conference on the Maritime Transportation Security Act (P.L. 107-295). No hearings had been held on the $3.5 billion proposal, although Congress had spent nearly two years discussing maritime security. It was not clear how much money would be needed or whether the distribution of funds would have been equitable. AAPA joined other industry groups, including shippers and carriers, in opposing the fee as premature and detrimental to international commerce. Funding seaport security through national user fees or taxes would also unfairly place a burden on the maritime industry. The only other transportation sector that pays a Federal security tax is the airline passenger industry. In that case, the Federal government took over the security function.

Local User Fees: AAPA supports the ability of a public port authority to establish user fees to be assessed at the local level or on a project basis to fund its security, dredging, or landside access needs. When a project, such as the Alameda Corridor, can justify user fees, the option should be available. Port authorities already have significant authority under common law and other legal precedents to charge appropriate user fees for services and benefits they provide. If a project is outside the port's legal authority, as set forth in its enabling legislation, which would be true in the case of many landside access projects outside its gates, state and local governments can establish new public entities (like the Alameda Corridor Transportation Authority) for these purposes (which may or not include a prominent role for the port authority).

One of the reasons for this hearing is to provide an opportunity to comment on the floor amendment to the Water Resources Development Act that was offered by Representative Rohrabacher (R-CA) to allow non-Federal entities to assess container fees to fund security and infrastructure projects both inside and outside the terminal gates. While we appreciate Congressman Rohrabacher's intentions, AAPA did not support the amendment because it did not address our underlying concerns with §208 of WRDA 1986.

AAPA has been advocating for several years that Congress replace §208 with a general provision recognizing a port authority's existing ability to levy fees. This ability to levy fees was seriously eroded when §208 was originally enacted because of the adoption of onerous limitations and requirements. These include §208(a)(3), which severely constrains the universe of vessels a fee may be levied upon; §208(a)(4), which requires non-Federal interests to undertake a burdensome assessment of the need for, and application and effects of, such fees; and, §208(a)(5) & (6), which proscribe strict procedural obligations on non-Federal sponsors for noticing the proposed fee and administering the collection and enforcement of the fee.

Since its enactment in 1986, only one port has established a fee under §208 because of complications created by these myriad limitations and requirements. In the draft amendment, fees for both security and infrastructure projects would also have been subject to the limitations and requirements contained in §208(a) (3), (4), (5), and (6). Fees for security and infrastructure projects authorized under the amendment would have been limited to only those projects built "in conjunction with a harbor navigation project whose construction is complete…" §208(a)(1). We believe this restriction alone would have severely limited the ability of port authorities to assess fees for the purposes intended by the amendment. Furthermore, this provision could be used to challenge a port authority that seeks to establish a security or infrastructure fee under its existing authority when the security or infrastructure project is not done in conjunction with a harbor improvement project.

The amendment also would have created a serious limitation on the collection of fees for security projects compared to fees for infrastructure projects. Fees for security measures included in §208(a)(1)(B) could have been assessed only while a port authority was collecting a port or harbor fee established under §208(a)(2)(A) because of the limitation imposed by §208(a)(2).

If similar legislative language[7] were to be offered outside the context of WRDA and without the restrictions of §208, it would, frankly, have limited utility for ports. While it might reiterate that ports have the ability to assess appropriate user fees, ports already have the authority under common law and legal precedent to assess fees for services and benefits provided. Even if Federal law were enacted permitting ports to assess user fees (container or otherwise) for projects outside their terminals, a port may not have the legal authority under its enabling legislation to undertake such an infrastructure development project.

Dedicated Federal General Treasury Funds: AAPA strongly supports the full funding of the Federal grant program included in the Maritime Security Transportation Act (MTSA) to fund port security enhancements. The provisions of MTSA requiring security improvements have been implemented with the issuance of the Coast Guard security regulations; however, neither Congress nor the Administration has followed through on the funding provisions. The maritime industry already generates $22 billion in Federal revenues annually in the form of 124 different user fees and taxes and Customs duties that go into the General Fund.[8] As the chart on p. 4 shows, during fiscal 1999-2001, maritime commerce generated an average of $15.2 billion annually in Customs duties alone, significantly more than generated by any cargo using any other mode of transportation to enter the United States.

Given the significant contribution that maritime commerce makes to the General Treasury, AAPA supports the concept contained in Representative Ose's "Port Security Improvements Act of 2003," H.R. 2193, which would provide a financing mechanism for port security enhancements through the use of Customs duties. The bill would allow a portion of Customs duties collected at each port of entry to be returned directly to the port as an entitlement to be used for security enhancements.

A significant portion of Customs duties is already earmarked for specific purposes. Under 7 U.S. Code §612, a total of 30 percent of Customs duties is already designated for agricultural and food programs. Pursuant to 16 U.S. Code §3912, all duties on guns and ammunition are credited to the Migratory Bird Conservation Fund, and under 26 U.S. Code §9504, duties on fishing tackle, yachts and pleasure craft are credited to the Sports Fish Restoration Account of the Aquatic Resources Trust Fund. In addition, tariffs from wood and certain wood products are credited to the Reforestation Trust Fund up to a total of $30 million under 16 U.S. Code §1606a.

We believe that the dedication of Customs duties should also be considered to ensure reliable funding of other Federal activities related to maritime commerce. Securing our nation's water borders and improving our nation's transportation system to facilitate international commerce should certainly be national priorities that justify the utilization of Customs duties. Like America's national defense, homeland security is a vital Federal role and homeland security enhancements protect all Americans.

CONCLUSION

As I stressed at the beginning of my statement, America's ports ask you to keep in mind that continued public investment, at both the Federal and state/local levels, is critically important for our transportation system to grow and thrive in the expanding global marketplace. We stand ready to work with you to ensure that U.S. seaports are secure, meet our national defense needs, and will provide a reliable, efficient, cost-effective and environmentally sustainable transportation system for America's businesses, consumers and cruise travelers. Thank you for the opportunity to testify and I would be happy to answer any questions.

Endnotes

[1] The Importance of the U.S. Port System, September 1997, U.S. Army Corps of Engineers Institute for Water Resources; IWR Report 97-R-9.

[2] Trade and Transportation – A Study of North American Port and Intermodal System, March 2003, The National Chamber of Commerce Foundation, Washington, DC; publication # 9100. www.uschamber.com/ncf.

[3] U.S. Port Development Expenditure Report, March 2003, U.S. Maritime Administration, Washington, DC. www.marad.dot.gov/publications/portdevrpt/2001rpt.pdf

[4] The federal government also spent an additional $2.0 billion on average annually on federal inspection and other services related to maritime commerce, such as administrative processing and associated services (averaging $555 million annually) physical services such as inspections or certifications (averaging nearly $1.5 billion annually) and miscellaneous services (averaging $97 million annually).

[5] Marine Transportation – Federal Financing and a Framework for Infrastructure Investments, September 2002, U.S. General Accounting Office, Washington, DC; GAO-02-1033; www.gao.gov/new.items/d021033.pdf

[6] Annual Report to Congress on the Status of the Harbor Maintenance Trust Fund for Fiscal 1999, February 2001, U.S. Army Corps of Engineers Institute for Water Resources; IWR Report 00-R-7. http://www.iwr.usace.army.mil/iwr/pdf/ANNUALRPT99_PM.pdf.

[7] Concerns about the amendment were also raised by the Port of Long Beach and others, who felt that the provision as drafted (with its reference to non-federal entities) would have permitted public agencies other than ports to unfairly interfere with seaport operations and the disposition of their revenues. This concern could certainly be alleviated with drafting changes.

[8] Commercial Maritime Industry, Updated Information on Federal Assessments, September 1999, U.S. General Accounting Office, Washington, DC; GAO/RCED-99-260.